



Town of Dumfries  
Council Meeting

Meeting Date:

April 16, 2013

Agenda Item#

VI – B

AGENDA ITEM FORM

**TYPE OF AGENDA ITEM:**

- ☐ CONSENT AGENDA  
☐ PRESENTATION  
☐ ACTION ITEM  
☐ TOWN MANAGER & STAFF COMMENTS  
☐ PUBLIC HEARING  
☐ Duly Advertised

**PURPOSE OF ITEM:**

- ☐ INFORMATION ONLY  
☒ DISCUSSION ONLY  
☐ DISCUSSION AND/OR DECISION  
☐ Introduction ☐ Resolution  
☐ Ordinance ☐ Grant/MOU  
☐ By Motion ☐ Bylaws  
☐ Certificate

**PRESENTER:** Christine Sanders

**PRESENTER TITLE:** Town Attorney

**AGENDA ITEM:**

Comcast Cable Franchise renewal

**BACKGROUND / SUMMARY:**

This matter has been discussed with Council previously. Additionally, Marie Shuler, Government Relations liaison for Comcast attended Council Work Session of March 19, 2013, to answer questions from Council members. This is being brought back one more time in advance of the public hearing and passage of the franchise by ordinance at the May 7, 2013 meeting.

**ATTACHMENTS:**

Draft Comcast Franchise renewal

**REQUESTED ACTION:**

Discuss and move to a public hearing for adoption by ordinance at the next Council meeting of May 7, 2013

**FOR MORE INFORMATION, CONTACT:**

Christine Sanders, Town Attorney; 703-221-3400 ext 140 or [csanders@dumfriesva.gov](mailto:csanders@dumfriesva.gov)

**FOR USE DURING MEETING**

**VOTE:**

☐ PASSED

☐ NOT PASSED

Y N

☐ ☐ Brewer  
☐ ☐ Reynolds  
☐ ☐ Wood

Y N

☐ ☐ Foreman  
☐ ☐ Toney

Y N

☐ ☐ Forrester  
☐ ☐ Washington

**CABLE TELEVISION FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Town of Dumfries, a political subdivision of the Commonwealth of Virginia (hereinafter, “Town”) and Comcast of Virginia, Inc. (hereinafter, “Franchisee”).

The Town, having determined that the financial, legal, and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

**SECTION 1 - Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Code of Virginia, Article 1.2, § 15.2-2108.19, and the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”), unless otherwise defined herein.

1.1 “Act” means the Communications Act of 1934.

1.2 “Affiliate”, in relation to any Person, means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3 “Basic service tier” means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental channels required to be carried in the basic tier.

1.4 “Cable Operator” means any Person or group of Persons that (A) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or (B) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System. Cable Operator does not include a provider of wireless or direct-to-home satellite transmission service.

1.5 “Cable Service” means the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

1.6 “Cable System” or “System” means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service that includes video programming and that is provided to multiple Subscribers within a community, except that such definition shall not include; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC § 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; .

1.7 “Customer” or “Subscriber” means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee’s express permission.

1.8 “Effective Date” means the date on which this Cable Franchise Agreement, with any necessary executed signatures, is enacted into law.

1.9 “FCC” means the Federal Communications Commission or successor governmental entity thereto.

1.10 “Force majeure” means an event or events reasonably beyond the ability of the Franchisee to anticipate and control. “Force majeure” includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which the Franchisee’s facilities are attached or to be attached or conduits in which the Franchisee’s facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

1.11 “Franchise” means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.12 “Franchise Agreement” or “Agreement” shall mean this Cable Franchise Agreement and any amendments or modifications hereto.

1.13 “Franchise Area” means the present legal boundaries of the Town as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.14 “Franchising Authority” means the Town of Dumfries or the lawful successor, transferee, designee, or assignee thereof.

1.15 “Franchisee” shall mean Comcast of Virginia, Inc.

1.16 “Ordinance” includes a resolution.

1.17 “Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

1.18 “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Franchise Area, which shall entitle the Franchising Authority and the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Franchisee to the use thereof for the purposes of installing, operating, and maintaining the Franchisee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

1.19 “Interactive on-demand services” means a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

Comment [TA1]: 47 USC 522(12)

1.20 “Transfer” means any transaction in which (i) an ownership or other interest in the Grantee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise granted under this Franchise Agreement are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another Affiliate of the Franchisee ; (b) transfer of an interest in the Franchise granted under this Franchise Agreement or the rights held by the Franchisee under the Franchise granted under this Franchise Agreement to the parent of the Franchisee or to another Affiliate of the Franchisee ; (c) any action that is the result of a merger of the parent of the Franchisee ; (d) any action that is the result of a merger of another Affiliate of the Franchisee ; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the

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Franchisee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.

1.21 “Video programming” means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

Comment [TA2]: 47 USC 522 (20)

### SECTION 2 - Grant of Authority

2.1 The Franchising Authority hereby grants to the Franchisee under the Code of Virginia and the Cable Act a nonexclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System and to provide such services over the Cable System as may be lawfully allowed.

Comment [TA3]: 47 USC 521 et seq

2.2 Term of Franchise. The term of the Franchise granted hereunder shall be Ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Code of Virginia and the Cable Act.

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2.3 Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Article 1.2 of the Code of Virginia and Section 626 of the Cable Act, as amended.

2.4 Reservation of Authority. Nothing in this Franchise Agreement shall be construed as a waiver of applicability of any codes or ordinances promulgated by the Franchising Authority, the Commonwealth of Virginia or the United States.

#### 2.5 Competitive Equity.

2.5.1 The Franchisee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions that are materially more favorable or less burdensome to the competitive entity than the material terms and conditions herein. If any such additional or competitive franchise is granted by the Franchising Authority which, in the reasonable opinion of the Franchisee, contains more favorable or less burdensome material terms or conditions than this Franchise Agreement, the Franchising Authority agrees that it shall amend this Franchise Agreement to include any more favorable or less burdensome material terms or conditions.

2.5.2 In the event an application for a new cable television franchise is filed with the Franchising Authority proposing to serve the Franchising Area, in whole or

in part, the Franchising Authority shall serve or require to be served a copy of such application upon the Franchisee by registered or certified mail or via nationally recognized overnight courier service.

2.5.3 In the event that a multi-channel video programming distributor (“MVPD”) provides service to the residents of the Town under a federal franchise that is unavailable to the Franchisee, the Franchisee shall have a right to request amendments to this Franchise Agreement that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the Franchisee shall file a petition seeking to amend the Franchise Agreement. Such petition shall: (1) indicate the presence of a competitor that has a federal franchise; (2) identify the basis for the Franchisee’s belief that certain provisions of the Franchise Agreement place the Franchisee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Franchising Authority shall not unreasonably withhold consent to the Franchisee’s petition.

### **SECTION 3 – Construction and Maintenance of the Cable System**

3.1 Permits and General Obligations. The Franchisee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

#### **3.2 Conditions of Street Occupancy.**

3.2.1 New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify the Franchisee of the availability of such funding and make such funds available to the Franchisee. It is understood that there is no guarantee by the Franchising Authority that public funds, will, in every instance, be available to defray costs of altering or relocating cable system to conform to new grades or lines.

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3.2.2 Relocation at request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3 Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchising Authority agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. The Franchisee will comply with the Town codes and requirements when restoring the property in the Public Right of Way. The Director of Public Works or his designee will determine compliance with this in accordance with the standards adopted in the most current Design and Construction Manual for Prince William County.

Comment [TA4]: Marie – as discussed

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3.2.4 Safety Requirements. The Franchisee Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5 Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense in accordance with ANSI A300 pruning standards. . The Franchisee shall provide the Town 10 business days' notice in advance of any planned tree trimming; notwithstanding, under emergency conditions reasonable notice under the circumstances is required. The Franchisee shall be responsible for any damage caused by such trimming and shall be responsible for all clean-up and removal of debris.

3.2.6 Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System's transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any

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part thereof, aerially or underground. Nothing in this Section shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment. **The Franchisee shall follow all applicable Town codes and requirements in the construction of the Franchisee's facilities in the Public Right of Way, including permitting and traffic control measures.** The Franchisee shall give 10 business days' notice to the Town via the Director of Public Works, unless a lesser time is mutually agreed.

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**Comment [M5]:** Timeline too long for emergency repairs. Is there a permit timeline in the Town code?

**Comment [TA6]:** May need sign off by dpw

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, the Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. The Franchisee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. The Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. It is understood that there is no Guarantee by the Franchising Authority that public funds will, in every instance, be available to defray costs of altering or relocating the cable system.

**Deleted:** It is understood that the Franchising Authority is not guaranteeing that public funds will be available for Franchisee's relocation costs.

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**Comment [M7]:** Comcast requested change 2/25/13 mtg -- mirrors 3.2.1

### SECTION 4 - Service Obligations

#### 4.1 General Service Obligation.

4.1.1 The Franchisee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile as measured in strand footage from the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. For purposes of this section, a home shall be counted as a "dwelling unit" if, and only if, such home is within two hundred fifty (250) feet of the public right of way. Subject to the density requirement, the Franchisee shall offer Cable Service to all new homes or previously unserved homes located within one hundred and twenty-five (125) feet of the Franchisee's distribution cable at the standard installation rate. Should, through new construction, an area within the Franchise Area meet the density requirements, Franchisee shall provide Cable Service to such area within one (1) year after it confirms that the density requirements have been met following notice from the Franchising Authority that one or more residents has requested service.

Any resident or group of residents not otherwise qualifying to receive service under this section may receive service if they agree in writing to pay to Franchisee the actual cost of construction, including materials, labor, and the total cost of any easement(s) necessary to accomplish the proposed line extension.

4.1.2 The Franchisee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Franchisee may impose an

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additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above. Such additional charge shall be paid by the developer or landowner or customer requesting Cable Service in an area that does not meet the density and distance standards.

4.2 New Developments. The Franchising Authority will use reasonable efforts to provide the Franchisee with notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Franchisee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches.

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Comment [TA8]: Mr. Singh's project

4.3 Programming. The Grantee shall offer to all Customers a diversity of video programming services. The Franchisee agrees to provide the Town and its Customers with a minimum of thirty (30) days advance notice of any changes to programming services and channel positions, if such changes are within the control of the Franchisee.

4.4 No Discrimination. The Franchisee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied; provided, however, that the Franchisee may deny service for good cause, including but not limited to theft of Franchisee's services, vandalism of its property, or abuse or harassment of its representatives. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice. The Franchisee shall assure that access to cable services is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

Comment [M9]: Need to discuss. Pass through to customers. What is the Town's concern?

Deleted: 4.5 Subscriber Surveys: Upon the request of the Franchising Authority, but not more than once every three (3) years, the Franchisee shall conduct a Subscriber satisfaction survey pertaining to the quality of service transmitted to Subscribers in the Franchisee's invoice for Cable services. The results of the survey shall be provided to the Town on a timely basis and in any case not less than three months after the survey has been distributed to the Subscribers.

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Comment [TA10]: 47 usc section 545(c) – requires 30 days.

Comment [M11]: Comcast proposed change discussed in 2-25-13 mtg

4.6 Changes in Service. In accordance with applicable law, the Franchisee shall provide the Franchising Authority with 30 days prior written notice before implementing any rate or service change.

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### SECTION 5 – Governmental Access Channel

5.1 The Franchisee shall provide capacity for one designated governmental access channel for video programming provided by the Franchising Authority or its

designee. Use of a channel position for the governmental access channel shall be provided on the most basic tier of service offered by the Franchisee in accordance with the Cable Act, Section 611, and Article 1.2 of the Code of Virginia, and as further set forth below. “Channel position” means a number designation on the Franchisee’s channel lineup regardless of the transmission format (analog or digital). The Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for governmental access use. A government access user acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. The Franchisee shall not exercise editorial control over any governmental use of a channel position. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for Government Access Channel use.

5.2. Government Access. A “Governmental Access Channel” is a channel position designated for noncommercial use by the Franchising Authority for the purpose of showing the public local government at work.

5.3 Indemnification. The Franchising Authority shall indemnify the Franchisee for any liability, loss, or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming shown on the Government Access Channel and from claims arising out of the Franchising Authority’s rules for or administration of access.

5.4 Within 90 days of the execution of this Franchise Renewal, Franchisee shall provide a ten thousand dollar (\$10,000.00) grant to the Franchising Authority to be used in support of the production of local government access programming. Such grant shall be used by the Franchising Authority for PEG Access equipment, including but not limited to upgrading transmission equipment, cameras, studio and portable equipment, program playback equipment or the renovation or construction of government access facilities.

**Comment [M12]:** Town understands this is a FRC and will be passed through

**Comment [TA13]:** Director of IT is assembling information on equipment in budget requests in support for this grant

**Deleted:** Within 180 days of execution of this agreement, the Franchisee shall upgrade the Government Channel transmission equipment.

## **SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection**

6.1 Customer Service Standards. The Franchisee hereby adopts and agrees to adhere to the customer service standards set forth in Part 76, §76.309 of the FCC’s rules and regulations, as amended. The Franchisee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Customer Bills. The Franchisee shall issue Customer bills which shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not

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omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3 Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

6.4 Virginia Communications Sales and Use Tax. The Franchisee shall comply with the provisions of Section 58.1-645 *et seq* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the “Communications Tax”), for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. 641, as amended, is imposed on the sale of cable services by the Franchisee to subscribers of the Town.

### **SECTION 7 - Oversight and Regulation by Franchising Authority**

7.1 Oversight of Franchise. In accordance with all applicable law, the Franchising Authority shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of the Franchisee’s employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor the Franchisee’s compliance with the provisions of this Franchise Agreement.

7.2 Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards according to any applicable FCC mandated timelines. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC’s rules.

**Comment [M14]:** Comcast proposed change discussed in 2-25-13 mtg

**Deleted:** within a reasonable period, not to exceed 90 days, after such standards become effective.

### 7.3 Maintenance of Books, Records, and Files.

7.3.1 Books and Records. Throughout the term of this Franchise Agreement, the Franchisee shall allow the Franchising Authority, upon reasonable prior written notice to the Franchisee, to review such of the Franchisee’s books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor the Franchisee’s compliance with the provisions of this Franchise Agreement at the Franchisee’s business office located in Prince William County, electronically, or at a mutually agreed upon location, during normal business hours, and without unreasonably interfering with the Franchisee’s business operations. Such books and records shall include any records required to be kept in a public file by the Franchisee pursuant to the rules and regulations of the FCC. Such books and records shall include but not be limited to: (i) written complaints concerning service, not necessarily limited to complaints requiring a service call; (ii)

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**Comment [TA15]:** This must be an office in Prince William County – please specify where.

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service interruptions or outages indicating the date, duration, area and number of subscribers affected, type of outage and cause; (iii) records of service calls for repair and maintenance including the date and time service was requested, date of acknowledgement of service request, date and time service was provided and date and time problem with service was resolved; (iv) records of installation or reconnection. All such documents pertaining to financial matters that may be the subject of an inspection by the Franchising Authority shall be retained by the Franchisee for a minimum period of three (3) years.

**Comment [M16]:** Comcast proposed deletion in 2-25-13 mtg

**Deleted:** and date and time service scheduled

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7.3.2 File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain at its business office located in Prince William County, or an mutually agreed upon location, in a file or electronically available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations (Public Files).

**Comment [TA17]:** See comment above on designating a business office in PWC

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7.3.3 Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Franchisee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Franchisee to be competitively sensitive. In the event that the Franchising Authority receives a request under a state "sunshine," public records or similar law for the disclosure of information the Franchisee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify the Franchisee of such request and cooperate with the Franchisee in opposing such request.

## SECTION 8 – Transfer or Change of Control of Cable System or Franchise

8.1 No transfer of this Franchise shall occur without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld, delayed or conditioned. No transfer shall be made to a Person, group of Persons or Affiliate that is not legally, technically and financially qualified to operate the Cable System and satisfy the obligations hereunder.

8.2 "Transfer" means any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Franchisee

is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise granted under this Franchise Agreement are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Franchise to the parent of the Franchisee or to another Affiliate of the Franchisee; (b) transfer of an interest in the Franchise granted under this Franchise Agreement or the rights held by the Franchisee under the Franchise granted under this Franchise Agreement to the parent of the Franchisee or to another Affiliate of the Franchisee; (c) any action that is the result of a merger of the parent of the Franchisee; (d) any action that is the result of a merger of another Affiliate of the Franchisee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.

#### **SECTION 9 - Insurance and Indemnity**

9.1 Insurance. Throughout the term of this Franchise Agreement, the Franchisee shall, at its own cost and expense, maintain Comprehensive Commercial General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Franchisee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Additionally, Franchisee shall maintain automobile liability insurance in the amount of One million Dollars (\$1,000,000.00) single limit combined for bodily injury and property damage. Such policy or policies shall be non-cancelable except to obtain alternate insurance in the same amounts with another insurance carrier. All insurance carriers with whom the Franchisee is insured shall be qualified and licensed to do business in the Commonwealth of Virginia. The Franchisee shall provide workers' compensation coverage in accordance with the requirements of the Commonwealth of Virginia. The Franchisee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Franchisee may become subject during the term of this Franchise Agreement. Upon written request of the Franchising Authority, the Franchisee shall deliver certificates of insurance of the above-required insurance within 30 days of the receipt of the request.

9.2 Indemnification. The Franchisee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability for damages or claims resulting from property damage or bodily injury (including accidental death) that result from the Franchisee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Franchisee written notice of its obligation to indemnify and defend the Franchising

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Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

### SECTION 10 - System Description and Service

10.1 System Capacity. During the term of this Agreement the Franchisee's Cable System shall be capable of providing a minimum of 80 channels of video programming with satisfactory reception available to its customers in the Franchise Area.

10.2 Service to Government Buildings. Upon receipt of a written request by an authorized representative of the Franchising Authority, the Franchisee shall provide free basic tier Cable Service and free installation at one outlet to each fire station, police station, library and other local building used for government purposes located in the Franchise Area within 125 feet of the Franchisee's distribution cable. The excess cost for extending service to buildings not within 125 feet of the Franchisee's distribution cable shall be paid by the entity requesting service. Exhibit A is a list of the buildings where existing service is being provided.

10.3 Emergency Alert System. The Franchisee shall be comply with the Emergency Alert System ("EAS"), requirements of the FCC in order that emergency messages may be distributed over the system.

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Comment [TA18]: According to Marie Schuler the system will automatically override.

q- what if something fails and it does not override automatically? The Franchising Authority shall permit only trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the of the Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System.

### SECTION 11 – Performance Guarantees/Enforcement of Franchise

11.1 Performance Bond. Within thirty (30) days of the effective date of the renewal of this Franchise, the Franchisee shall maintain a performance bond from a financial institution licensed to do business in Virginia, running to the Town in the amount of ten thousand dollars (\$10,000). The bond shall be used to ensure the faithful performance by the Franchisee of all of the provisions of this franchise, all applicable Codes of the Commonwealth of Virginia and the mandatory requirements of 47 USC sections 521—573 and any rules promulgated thereunder, to ensure the Franchisee's faithful performance of its obligations hereunder.

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Comment [M19]: Steve – they know they will be getting a Performance Bond

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Deleted: and all other lawful orders, permits and directions of any agency, commission, board, department or office of the Town or having jurisdiction over the Franchisee of any penalties, or liquidated

11.2 Requirements of bond. Any bond obtained by Franchisee must be placed with a company which is qualified to write bonds in the Commonwealth of Virginia, such bond shall be subject to the approval of the Town Attorney, which approval shall not be unreasonably withheld or denied and shall contain the following endorsement (or substantively equivalent language as agreed upon by the Town):

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"it is hereby understood and agreed that this bond may not be cancelled without the consent of the Town of Dumfries until sixty (60) days after receipt by the Town by registered mail, return receipt requested, of written notice of intent to cancel or not renew."

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The performance bond shall be effective throughout the term of this Franchise, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that the Franchisee shall fail to comply with any one or more provisions of this Franchise Agreement, the Town shall recover from the surety of such bond all damages suffered by the Town as a result thereof, pursuant to section 11.3.

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In the event that the Town recovers from said surety, the Franchisee shall take immediate steps to reinstate the performance bond to the \$10,000 required herein. Neither this section, any bond accepted pursuant thereto, or any damages recovered thereunder shall limit the liability of the Franchisee under the Franchise Agreement.

Deleted: The Town may recover from the letter of credit any and all fines, penalties due to the town and any and all damages, losses, costs and expenses suffered or incurred by the Town ¶

**11.3. Non-compliance procedures.** Should the Franchising Authority believe that the Franchisee has not complied with any of the provisions of this Franchise Agreement, it shall: (i) informally discuss the matter with the Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the Franchising Authority shall notify the Franchisee in writing of the exact nature of the noncompliance. (the "Noncompliance Notice"). the Franchisee shall have thirty(30) days from receipt of the Noncompliance Notice to, (a) respond to the Franchising Authority, if the Franchisee contests, in whole or in part, the assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

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**11.4 Public Hearing.** The Franchising Authority shall schedule a public hearing in the event that the Franchisee fails to respond to the Noncompliance Notice pursuant to the above, or in the event that the alleged default is not remedied within forty-five (45) days of the receipt of the Noncompliance Notice. The Franchising Authority shall provide the Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place, and purpose. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation in accordance with applicable law, including the right to be represented by legal counsel.

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**11.5. Enforcement:** Subject to applicable federal and state law, in the event that the Franchising Authority, after public hearing set forth in 11.3 above, determines that Franchisee is in default of any provision of this Franchise, the Franchising Authority may:

**11.5.1** Seek specific performance of any provision, which reasonably lends itself to such remedy; or

**11.5.2** Commence an action at law for monetary damages or seek other equitable relief; or

**11.5.3** Seek liquidated damages as described below in Paragraph 12.12.

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**Liquidated Damages.** Because it may be difficult to calculate the harm to the Franchising Authority in the event of a breach of this Franchise Agreement by the Franchisee, the parties agree to liquidated damages [LD's are limited as defined in section 12.3] as a reasonable estimation of the actual damages. To the extent that the Franchising Authority

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elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section is intended to preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach. Liquidated damages shall not be assessed until the Franchising Authority has completed the procedures set forth in 11.3 hereof, including holding a public hearing, and has notified the Franchisee, by certified or registered mail, of the proposed liquidated damage, specifying the violation at issue. The Franchisee shall have ~~thirty~~ (30) days from the date of receipt of the written notice to submit payment. If the Franchisee does not make payment within that period, the Franchising Authority may obtain the amount assessed from the Franchisee's performance bond. [See performance bond section above]

12.1 The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Franchising Authority.

12.2 The Franchisee may appeal (by pursuing judicial relief or other relief afforded by the Franchising Authority) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. The Franchisee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.

12.3 Liquidated damages may be assessed for the following violations of this Franchise Agreement, in the following amounts:

(A) Failure to comply with Government Access requirements: customer service standards: \$100 for each violation except where compliance is measured quarterly, in which case damages shall be as specified in Section 11.3.4(B). [this section should be rewritten so that it pertains to the PEG section]

(B) Failure to comply with customer service standards with which compliance is measured on a quarterly basis: \$300 for each quarter in which such standards were not met if the failure was by less than 10%; \$500 for each quarter in which such standards were not met if the failure was by 10% or more but less than 25%; and \$1000 for each quarter in which such standards were not met if the failure was by 25% or more.

11.4 Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

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Deleted: or letter of credit. The Franchisee shall then cure the bond or letter of credit to the original amount of ten thousand dollars (\$10,000.00).

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Deleted: On an annual basis from the Effective Date of the Franchise, liquidated damages in total will not exceed five thousand dollars (\$5,000) (the "Liquidated Damages Cap").

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Comment [M20]: Verizon has no liquidated damages. Requesting original amounts.

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Deleted: In no event may liquidated damages be assessed for a time period exceeding one hundred twenty (120) days. If after that amount of time the Franchisee has not cured or commenced to cure the alleged breach to the satisfaction of the Franchising Authority, the Franchising Authority may pursue all other legal or equitable remedies.¶

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11.4.1 in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.4.2 where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

**SECTION 12 - Miscellaneous Provisions**

12.1 Force Majeure. The Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by events which constitute a Force Majeure, as defined in the Agreement.

12.2 Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

Town of Dumfries  
17755 Main Street  
Dumfries, Virginia 22026  
Attn: Town Manager

With copies to:

Town of Dumfries  
17755 Main Street  
Dumfries, Virginia 22026  
Attn: Town Attorney

To the Franchisee:

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Comcast of Virginia, Inc.  
2707 Wilson Boulevard  
Arlington, Virginia 22201  
Attn: Government Affairs Department

With copies to:

Comcast Cable Communications, Inc.  
1301 McCormick Dr., 4th Floor  
Largo, MD 20774  
Attn.: Government Affairs Department

12.3 Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Franchisee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

12.4 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

12.5 Governing Law. This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia, as applicable to contracts entered into and performed entirely within the Commonwealth.

12.6 Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

12.7 No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

12.8 No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, that the Franchisee may have under federal or state law unless such waiver is expressly stated herein.

12.9 Incorporation by Reference

12.9.1 All presently and hereafter applicable conditions and requirements of federal, State and local laws, including but not limited to the rules and regulations of the FCC and the Commonwealth of Virginia, as they may be amended from time to time,

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are incorporated herein by reference to the extent not enumerated herein. All such general laws, rules and regulations, as amended, shall control the interpretation and performance of this Renewal Franchise to the extent that any provision of this Renewal Franchise conflicts with or is inconsistent with such laws, rules or regulations.

12.9.2 Should the Commonwealth of Virginia, the federal government or the FCC require Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchising Authority and Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

12.10 Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest: Town of Dumfries, Virginia

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: Comcast of Virginia, Inc.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_